

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LYNETTE M. PETRUSKA,	)	
Plaintiff	)	
v.	)	Civil Action No. 2004-80 Erie
GANNON UNIVERSITY	)	
and	)	
THE BOARD OF TRUSTEES	)	
OF GANNON UNIVERSITY	)	
and	)	
WILLIAM I. ALFORD II, ROBERT H.	)	
ALLSHOUSE, JOSEPH F. ALLISON,	)	
REV. MICHAEL P. ALLISON, JAMES	)	
A. BALDAUF, L. SCOTT BARNARD,	)	
GEORGE J. BEHRINGER, ARNOLD	)	
E. BERGQUIST, REV. MSGR.	)	
LAWRENCE E. BRANDT, REV. MSGR.	)	
ROBERT L. BRUGGER, DONALD M.	)	
CARLSON, DANIEL C. CARNEVAL,	)	
D.O., HON. SPEPHANIE	)	
DOMITROVICH, THOMAS L. DOOLIN	)	
JAMES J. DURATZ, ANTOINE M.	)	
GARIBALDI, THOMAS C. GUELCHER	)	
WILLIAM M. HILBERT, SR., BRIAN J.	)	
JACKMAN, JAMES W. KEIM, JR.,	)	
SR. MARY RITA KUHN, SSJ, THOMAS	)	
J. LOFTUS, ANNE D. MCCALLION,	)	
JOSEPH T. MESSINA, MICHAEL J.	)	
NUTTALL, JOHN E. PAGANIE,	)	
DENISE ILLIG ROBISON, JAMES A.	)	
SCHAFFNER, HELEN M. SCHILLING,	)	
M.D., D.D.S, VERY REV. JOHN M.	)	
SCHULTZ, REV. MSGR. ROBERT J.	)	
SMITH, REV. MSGR. LAWRENCE T.	)	
SPEICE, WILLIAM C. SPRINGER,	)	
JAMES F. TOOHEY, BISHOP DONALD	)	
W. TRAUTMAN, SR. ANASTASIA	)	
VALIMONT, SSJ, SR. RICARDA	)	
VINCENT, SSJ, MELVIN	)	
WITHERSPOON, and ALL OTHER	)	
KNOWN AND UNKNOWN MEMBERS	)	
OF THE BOARD OF TRUSTEES OF	)	
GANNON UNIVERSITY DURING THE	)	

TENURE OF ITS CURRENT	)	
CHAIRMAN DONALD W. TRAUTMAN	)	
as members of the Board of Trustees	)	Civil Action No. 2004-80 Erie
of Gannon University	)	
and	)	
BISHOP DONALD W. TRAUTMAN,	)	
MSGR. DAVID RUBINO, ANTOINE	)	
GARIBALDI, and REV. NICHOLAS	)	
ROUCH	)	
in their individual and official capacities,	)	
Defendants	)	

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**DEFENDANTS' JOINT RESPONSE IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT**

AND NOW come the Defendants, jointly, through their respective counsel, and file this Joint Response in Opposition to Plaintiff's Motion for Leave to Amend Complaint, respectfully stating:

1. Counts I and II of Plaintiff's proposed Second Amended Complaint purport to state claims of gender and retaliatory discrimination under Title IX of the Education Amendments of 1972, 20 U.S.C. §§1681 *et seq.* (Title IX), Count III of the proposed Second Amended Complaint purports to state a claim of civil conspiracy to violate Title IX; Count IV of the proposed Second Amended Complaint re-alleges Plaintiff's original claim of fraudulent misrepresentation; and Count V of the proposed Second Amended Complaint restates Plaintiff's original breach of contract claim.

2. The claims of gender and retaliatory discrimination Plaintiff sets forth in Counts I and II of the proposed Second Amended Complaint are the same claims of gender and retaliatory discrimination she asserted under in her First Amended Complaint under Title VII of the Civil Rights Act of 1964 (Title VII), which she now proposes to pursue under Title IX, and

the claim for civil conspiracy she sets forth in Count III of the proposed Second Amended Complaint is the same civil conspiracy claim she asserted in her First Amended Complaint, except she alleges now that the focus of the conspiracy was to violate Title IX.

3. This Court previously dismissed Plaintiff's gender and retaliatory discrimination claims under Title VII and her civil conspiracy claim on the basis that the ministerial exception, arising under the First Amendment to the United States Constitution, precludes courts from interfering with a religious organization's First Amendment right to select who will perform spiritual functions and how those functions will be divided, and the Third Circuit Court of Appeals affirmed the dismissal of those claims.

4. The gender and retaliatory discrimination claims Plaintiff proposes to set forth in Counts I and II of the Second Amended Complaint under Title IX and the civil conspiracy claim Plaintiff proposes to set forth in Count III of the proposed Second Amended Complaint are also precluded by the ministerial exception.

5. Counts I, II and III of the proposed Second Amended Complaint fail to state claims upon which relief can be granted and are therefore subject to dismissal under Federal Rule of Civil Procedure 12(b)(6).

6. The Court has discretion to deny a motion for leave to amend where the proposed amendment would be futile, *i.e.*, subject to dismissal for failing to state a claim upon which relief can be granted.

7. This Court should exercise its discretion and deny Plaintiff's Motion for Leave to Amend Complaint with respect to Counts I, II and III of the proposed Second Amended Complaint attached thereto.

WHEREFORE, Defendants respectfully request that this Court deny Plaintiff's Motion for Leave to Amend with respect to Counts I, II and III of the proposed Second Amended Complaint, and grant the Motion as to Counts IV (fraudulent misrepresentation) and Count V (breach of contract) of the proposed Second Amended Complaint.

Respectfully submitted,

ELDERKIN, MARTIN, KELLY & MESSINA

/s/ Evan C. Rudert

Evan C. Rudert, Esquire

150 East Eighth Street

Erie, PA 16501

(814) 456-4000

Attorneys for All Defendants other than Trautman,  
Rubino, Garibaldi and Rouch *in their individual  
capacities*

QUINN, BUSECK, LEEMHUIS,  
TOOHEY & KROTO, INC.

/s/ Arthur D. Martinucci

Frank L. Kroto, Jr., Esquire

Arthur D. Martinucci, Esquire

2222 West Grandview Boulevard

Erie, PA 15606

(814) 833-2222

Attorneys for Trautman, Rubino, Garibaldi and Rouch *in  
their individual capacities*

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing pleading/document with the Clerk of the Court using the CM/ECF system, which sent electronic notification of the filing to the following: C. John Pleban and AnnDrea M. Benson, counsel for Plaintiff, and Frank L. Kroto, Jr. and Arthur D. Martinucci, counsel for Defendants Trautman, Rubino, Garibaldi and Rouch *in their individual capacities*. I further certify that I mailed a true and accurate copy of the foregoing pleading/document, using United States mail, first class postage prepaid, to:

C. John Pleban, Esquire  
2010 South Big Bend Blvd.  
St. Louis, MO 63117  
Attorney for Plaintiff

AnnDrea M. Benson, Esquire  
12270 Woodside Drive  
Edinboro, PA 16412  
Attorney for Plaintiff

Frank L. Kroto, Jr., Esquire  
Arthur D. Martinucci, Esquire  
2222 West Garndview Blvd.  
Erie, PA 16506  
Attorneys for Defendants Trautman,  
Rubino, Garibaldi and Rouch, *in  
their individual capacities*

/s/ Evan C. Rudert